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Supreme Court of the United States

OCTOBER TERM 1945
No. 254, 255.

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940, 1941 TAX)

BRIEF OF PETITIONER.

ROLAND J. FARICY
Attorney for Petitioner
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota.

OTIS, FARICY & BURGER
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota
of Counsel

SUBJECT INDEX

	Page
Grounds of Jurisdiction	1
Statement of Case	2
Assignments of Error	7
Questions Presented	9
Summary of Argument	10
The Nature of the Tax Under Minnesota Statutes	14
Argument	16
I. Lands belonging to the United States are immune from any form of taxation by the State of Minnesota in the absence of express congressional consent	16
II. The power of Congress to dispose of Federal lands is absolute and where conditions have been imposed either by Congress or by Administrative officials under congressional authority, no taxable interest passes to the purchaser prior to full performance of the conditions	18
III. S. R. A. has no equity which is subject to state taxation	43
IV. Separate interests in land are not taxable under Minnesota Statutes	46
V. By including the interest of the Government in the valuation of the land, the state has subjected that interest to taxation	52
VI. The purchaser can assert the claim that the premises are immune from taxation	53
VII. The economic results of immunity are for legislative bodies, not courts, to decide	55
Conclusion	58
Appendix	60

TABLE OF CASES

Page

A. B. R. Corporation vs. City of Newark, 131 N. J. L. 147, 35 Atl. 2d 473, 133 N. J. L. 34, 42 Atl. 2d 296 ..... 29, 34, 45

Ballard vs. Hunter, 204 U. S. 241, 27 Sup. Ct. 261, 51 L. Ed. 461 14

Baltimore Shipbuilding Company vs. Mayor, 195 U. S. 375, 25 Sup. Ct. 50 42

Carpenter vs. Shaw, 280 U. S. 363, 50 Sup. Ct. Rep. 121, 75 L. Ed. 478 46

City of New Brunswick vs. United States, 276 U. S. 547, 48 Sup. Ct. 371, 72 L. Ed. 693 39

City of New Orleans vs. Stemple, 175 U. S. 309, 44 L. Ed. 174, 20 Sup. Ct. 110 46

Clark vs. County of Stearns, 47 Minn. 552, 50 N. W. 615. 15

Copp vs. State of Virginia, 71 S. E. 580 31

Frick vs. Pennsylvania, 268 U. S. 473, 45 Sup. Ct. 603. . 47

Hacklander vs. Parker, 204 Minn. 260, 283 N. W. 406. . 50

Irwin vs. Wright, 258 U. S. 219, 66 L. Ed. 573, 42 Sup. Ct. Rep. 293 ..... 22, 26, 42, 44

Ken Realty Company vs. Johnson, 138 Fed. 2d 809. . 30, 36, 52

Lincoln County vs. Pacific Spruce Corporation, 26 Fed. 2d 435 ..... 29, 33, 41, 45

McCulloch vs. Maryland, 4 Wheaton 316 16

Mint Realty Company vs. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130 ..... 28, 44

Northern Pacific Railway Company vs. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201 ..... 22, 24, 50, 56

People vs. Burke, 142 N. E. 320 (affirming 198 N. Y. S. 601) 29

Railway Company vs. McShane, 22 Wall. 444, 22 L. Ed. 747 ..... 22, 23

Railway Company vs. Prescott, 16 Wall. 603, 21 L. Ed. 373 21
St. Louis vs. Wiggins Ferry Co., 11 Wall. 423, 20 L. Ed. 192 56
Shannon vs. United States, 160 Fed. 870 19
State vs. Washington County, 207 Minn. 530, 292 N. W. 204 ..... 14, 48, 49
United States vs. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908 ..... 19, 36, 37, 46, 52, 53, 56
United States vs. Board of Commissioners, 145 Fed. 2d 329, certiorari denied 65 Sup. Ct. Rep. 563, 89 L. Ed. 478 38
United States vs. Fisher, 11 Fed. 2d 629 19
United States vs. Milwaukee, 100 Fed. 828 ..... 29, 30

TEXTS

Page
51 Am. Jur. 285 29

CONSTITUTION OF THE UNITED STATES CITED

Page
Art. 1, Sec. 8 19
Art. IV, Sec. 3 ..... 1, 7, 9, 18
Art. VI, Par. 2 ..... 1, 7, 19
Art. XIV, Sec. 1 of Amendments 2, 7, 9

CONSTITUTION OF STATE OF MINNESOTA CITED

Page
Art. 2, Sec. 3 ..... 17, 49

STATUTES CITED

Page

United States:

Enabling Act of Congress, authorizing Minnesota State Government 9

Judicial Code, Sec. 237(b), 28 U. S. C. 344 2

Organic Act of Minnesota 1, 16

12 U. S. C. 264p 18

12 U. S. C. 531 18

12 U. S. C. 931 18

12 U. S. C. 1433 18

12 U. S. C. 1714 18

15 U. S. C. 610 17

40 U. S. C. 304(a) 10, 19

43 U. S. C. 455 17

43 U. S. C. 455a 18

73 U. S. C. 882 18

Minnesota:

Minnesota Statutes 1941:

Sec. 272.03 ..... 8, 12, 15, 47, 49, 60

Sec. 272.04 ..... 15, 61

Sec. 272.31 ..... 15, 61

Sec. 273.11 ..... 15, 62

Sec. 273.13 ..... 15, 62

Sec. 273.19 ..... 47, 48, 62

Sec. 275.09 15

Sec. 278.01 2

Sec. 278.02 2

Sec. 278.03 2

Sec. 278.04 2

Sec. 278.05 2

Sec. 279.16 ..... 51, 63

Sec. 280.01 ..... 15, 65
Sec. 280.03 ..... 51, 65
Sec. 280.06 ..... 13, 43, 66
Sec. 280.11 ..... 52, 66
Sec. 280.25 68
Chapter 328, Laws 1907 28

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OCTOBER TERM 1945

No. 254, 255.

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940, 1941 TAX)

BRIEF OF PETITIONER.

GROUNDS OF JURISDICTION.

The jurisdiction of the Court is invoked on the ground that the title to the premises against which an *ad valorem* tax was assessed by the State of Minnesota is in the United States of America; that the premises are exempt from state taxation; that the levy and assessment of the tax deprives the Petitioner of a privilege and immunity secured to it under the Constitution of the United States, particularly Article VI, Section 2 (the Supremacy clause) and Article IV, Section 3, and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, and by virtue of the Act of

Congress authorizing a State Government for the territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857, and is in violation of Petitioner's rights under the due process and equal protection clauses of Article XIV, Section 1 of the Amendments to the Constitution of the United States.

Jurisdiction in such cases is conferred by Section 237(b) of the Judicial Code (28 U. S. C. Section 344) authorizing a review by this court,

> "Where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

STATEMENT OF CASE.

Two cases are before the Court. The first, No. 254, relates to the 1940 real estate taxes levied and assessed by the State of Minnesota against a parcel of land in Ramsey County, Minnesota, hereinafter more fully described, and No. 255, relates to the 1941 real estate taxes levied and assessed by the State of Minnesota upon the same parcel. The issues are the same and we are taking the liberty of presenting the two causes under one brief.

These proceedings were instituted by S. R. A. INCORPORATED by a petition under a special statutory proceeding provided by Section 278.01 to 278.05 Mason's Minnesota Statutes to determine that the title to certain real property in Ramsey County, Minnesota being purchased by it under a contract with the United States of America was in the United States of America on May 1, 1940, and May 1, 1941,

the dates when the levy were made, and that the premises were immune and exempt from taxation by the State of Minnesota or the County of Ramsey within said state until the purchase price for said property had been paid in full to the United States and until the Petitioner was entitled to a conveyance from the United States. The cases were tried upon stipulations of facts (R. 12-16, 42-47, 83-87). From these stipulations it appears that S. R. A. INCORPORATED is a Minnesota corporation; that the real estate in question is located in Ramsey County, Minnesota and was acquired by the United States in 1867 and improved by it in 1870; that the premises and the building which was erected by the United States thereon were occupied by the United States Government for many years as a post office and as an office for various departments of the Government including the Department of Internal Revenue (R. 13); that in 1939, the United States sold these premises to the Petitioner for $121,101.00 under a contract by the terms of which the purchaser agreed to pay 5 per cent of the purchase price on the date of the execution of the contract, 5 per cent nine months from the date of the acceptance of the proposal by the Government and the balance at the rate of $9,500.00 a year for nine years including principal and interest, the remaining balance to be paid at the end of the tenth year, and the United States agreed to deliver to the Petitioner a quit claim deed conveying to it a marketable title to said premises, free and clear from all encumbrances, objections or defects except such as were noted in the contract and except such as may have accrued against the purchaser's interest in the property subsequent to the acceptance of the proposal when

the total purchase price had been paid as provided and the terms and conditions of the contract had been complied with (R. 4-11); that on May 1, 1940, and May 1, 1941, the contract was still in full force and effect (R. 14, 45, 85-86).

The sale was made pursuant to Act of Congress of August 27, 1935, 49 Stat. 885, U. S. C. Title 40, Section 304 (a) (R. 4, 6).

The contract provides further that the same may be terminated upon failure of the purchaser to comply with any of the terms and conditions, whereupon any installments already paid shall be retained by the Government and that the Government may then resume possession of the premises and at its option again sell the same and recover from the defaulting purchaser any deficiency in price resulting from the resale together with all expenses incurred by reason of the default. With the consent of the Government, the purchaser in advance of final payment may have conveyance of portions of the property upon advance payment of such portion or portions of the total purchase price as the Government shall determine. Leases may be executed without the Government's approval "but shall be subordinate *to the Government's interest in the property,*" (R. 4-11).

Prior to May 1, 1940, the Petitioner took possession of the premises as it was entitled to do under the terms of the contract, razed the building thereon, constructed a new building on a part thereof which is leased to various tenants and leased the remainder of the property for a parking lot. On May 1 of each year involved, the premises were used for commercial purposes, the Petitioner collecting and retaining the rents and no part was used by the United States (R. 14,

45, 85). On May 1, 1940, there was still due and owing to the United States under the contract $108,990.90 (R. 45) and on May 1, 1941, $103,850.84 (R. 86).

On May 1, 1940, the County of Ramsey, State of Minnesota, assessed and levied a tax against said premises "subject to fee title remaining in the United States" in the sum of $11,129.75 (R. 46) and on May 1, 1941, a tax amounting to $11,431.78 (R. 86), both based upon a valuation of $277,600 (R. 3).

The 1940 tax originally came on for trial before the court of first instance, District Court of Ramsey County, Minnesota, on December 1, 1941, upon a stipulation of facts (R. 12-16). Under Paragraph 13 of that stipulation, only the question of immunity from taxation was submitted to the Court. The court of first instance found that the premises were immune from taxation upon the ground that they constitute property of the United States and findings of fact, conclusions of law and an order for judgment to that effect were entered (R. 16-21). A motion by the state for amended findings or for a new trial was denied by the lower court (R. 25-26). The state appealed from that order to the Supreme Court of the State of Minnesota and by the decision of that Court dated December 24, 1942, and reported in 213 Minn. Rep. 487 (7 N. W. 2d 484) (R. 27-38), the order of the lower court was reversed.

The 1940 tax case came on for trial upon all issues on April 12, 1944, and at the same time the 1941 tax case was presented. The facts were stipulated. Among other things, it was agreed that the full and true value of the premises as of May 1, 1940 and May 1, 1941, for the purposes of this

litigation, was $225,000.00 without deduction of any amount on account of the balance remaining due under the contract with the United States of America (R. 46, 86-87). The Court found that the premises were not immune from taxation, overruled the objections, held the assessments valid and rendered judgments on May 8, 1944, in favor of the state and adjudged the premises here involved liable for taxes for the year 1940 in the sum of $9,026.17 and for the year 1941 in the sum of $9,270.97 (R. 51-52, 91-92). Upon appeal to the Supreme Court of Minnesota these judgments were affirmed by decisions filed April 13, 1945 (R. 52-74, 93) and judgments entered April 24, 1945 (R. 74, 93-94). The decision respecting the 1940 tax is reported in 219 Minn. 493, 18 N. W. 2d 442, that respecting the 1941 tax in 219 Minn. 517, 18 N. W. 2d 455. The constitutional objections were raised in the petitions to the District Court (R. 1-11, 38-42, 79-83) and by brief and oral argument in the Supreme Court.

ASSIGNMENTS OF ERROR.

The Supreme Court of Minnesota erred:

1. In affirming the judgments of the District Court of Ramsey County, Minnesota, dated May 8, 1944.

2. In holding the tax valid.

3. In holding that the property here involved was subject to taxation by the State of Minnesota "subject to fee title remaining in the United States of America."

4. In refusing to hold that the tax was a violation of Article IV, Section 3 of the Constitution of the United States.

5. In refusing to hold that the tax was a violation of Section 1 of Article XIV of the amendments to the Constitution of the United States.

6. In refusing to hold that the tax was a violation of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849.

7. In refusing to hold that the tax was a violation of the act of Congress authorizing a state government for the Territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857.

8. In refusing to hold that the questions here involved were Federal questions and not controlled by the law of any state under Article VI, Paragraph 2 (the Supremacy Clause) of the Constitution of the United States.

9. In refusing to hold that the tax was a violation of Article 2, Section 3 of the Constitution of the State of Minnesota and therefore deprived the petitioner of his property without due process and denied it the equal protection of the law under Section 1, Article XIV of the amendments to the U. S. Constitution.

10. In holding that the petitioner is not in a position to assert the United States tax immunity.

11. In holding that the interests of vendor and vendee in real estate in Minnesota are separable for the purposes of real estate taxation.

12. In refusing to hold that the building on the premises was taxable as personal property under Section 272.03 of Minnesota Statutes (1941).

13. In basing its decision in part upon the fact that the premises here involved are used for commercial purposes.

14. In holding that a tax levy upon the vendees equitable interest is not directly or indirectly a tax upon the vendors legal estate.

15. In holding that the State of Minnesota may levy a tax upon a limited interest or estate in real property and, upon default, hold a tax sale of such limited interest or estate, subject to and without impairing the outstanding superior lien or other estate.

16. In holding that the doctrine of the federal land grant cases has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

QUESTIONS PRESENTED.

The ultimate questions presented are whether the enforcement of the tax as levied would deprive S. R. A. Inc. (the petitioner) of its property without due process of law or deny it the equal protection of the laws in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States, or would operate to subject to state taxation property of the United States which is immune from taxation under the decisions of this court and contrary to the provisions of Article IV, Section 3 of the United States Constitution and contrary to the provisions of the Organic Act of Minnesota and of the Enabling Act of Congress authorizing the Minnesota State Government and of the Constitution of the State of Minnesota.

Specifically, and severally the questions presented are as follows:

1. Where land owned by the United States of America is sold by it under an installment contract, may the State of Minnesota tax such land as real estate prior to such compliance by the purchaser with the contract as will entitle him to a deed?

2. May such land be taxed by the State "subject to fee title remaining in the United States of America?"

3. May the interest of the United States in the premises (assuming non-exemption) be included in determining the value of the property for tax purposes?

SUMMARY OF ARGUMENT.

1. Lands belonging to the United States are immune from any form of taxation by the State of Minnesota in the absence of express Congressional consent.

2. Under Article IV, Section 3 of the Federal Constitution the disposition of lands belonging to the United States is strictly a matter for Congressional action. The power to dispose of Federal lands is absolute and without limitation except as Congress itself may place limitations in establishing the terms and conditions under which disposition may be made. The Act of Congress (40 U. S. C. 304(a)) authorizing the sale of the premises here involved confers administrative discretion in the Director of Procurement to sell upon such terms and conditions as he may deem in the public interest.

3. The lands here sought to be taxed belong to the United States. The contract with S. R. A. Inc. pursuant to the Legislative authority granted by Congress did not divest the United States of its ownership. On the contrary, the contract expressly recognized the continuing title and ownership of the United States and provides the method, and the only method, by which that title and that ownership may be divested, namely, compliance by the purchaser with the terms of the contract including full payment of the purchase price.

4. The validity and construction of contracts through which the United States exercises its constitutional functions, their consequences on the rights and obligations of parties, the titles or liens which they create or permit are questions of Federal law not controlled by the law of any state under Article VI of the Constitution.

5. Where the conditions under which real property owned by the United States may be alienated have been prescribed by Congress or by administrative officials acting under Congressional authority, equitable title, sufficient to permit the taxation of such real property by the States, does not mature until all such conditions required to be performed by the purchaser to secure a deed have been complied with. While any part of the purchase price remains unpaid, the right to subject the property to local taxation does not exist.

6. The Minnesota real property tax is an *ad valorem* tax against property, not persons, and is predicated upon jurisdiction of property, not owners. This property cannot be taxed without including in the assessment the title and ownership of the United States. The lien of the tax, if the tax be valid, must be superior to the interests of the United States and a tax sale must include the title, ownership and interest of the United States.

7. No statutory authority has been provided by the State of Minnesota for the taxation of the separate interests in land where the United States, being the owner has sold the same under contract, the terms of which have not been performed fully. No valid authority to that end can be established by the State of Minnesota without the concurrence of Congress. The "equity" in lands of a purchaser from the United States under such a contract as is here presented cannot be subjected to taxation by the State.

8. The power of taxation is a legislative function and taxes can be levied and collected only under statutory authority. If the legislature fails to provide for the taxation of separate interests in land, the courts are not author-

ized to supply the omission and to adjudge the separate interests subject to taxation. Neither the taxing authorities nor the Minnesota Supreme Court have cited any statutory or legislative authorization for the taxation of any interest less than the whole in this matter.

9. Where a Federal right is concerned, the Supreme Court of the United States is not bound by the characterization given to a state tax by the state courts, or relieved by it from the duty of considering the real nature of the tax and its effect upon the Federal right asserted. The interests here sought to be separated are not severable for the purposes of taxation as a matter of Federal Law. Assuming that they are severable, the Statutes of Minnesota authorize no assessment against the separate interests. In either event, the rights of S. R. A. under the 14th Amendment to the Constitution are violated by the attempt of the State to enforce the tax. The act of the Minnesota taxing officers and the decision of the Minnesota Supreme Court are without precedent or authority.

10. The State of Minnesota clearly recognizes the immunity of this land from real estate taxes. Under Section 272.03 Subd. 3, Minnesota Statutes, "All improvements made by others upon lands the fee of which *is still vested* in the United States" (italics supplied) is made subject to *personal property taxes* notwithstanding that Subd. 2 of the same section includes "buildings" in the definition of "real property." Personal property taxes in Minnesota are charges against persons and are collectible without resort to the thing which is the subject of the tax.

11. Assuming non-immunity, the value of the interest of the Government has been included in the assessment. The

resulting tax is a tax against the interest of the United States. The procedure of the assessor is consistent with no other theory than that the whole land, including all interests, was being assessed and taxed. The substance of this procedure was to lay an *ad valorem* tax on property owned by the United States.

12. The tax against the premises here involved is invalid because there exists no authority on the part of the State of Minnesota to levy, assess or collect it. S. R. A. as the purchaser of the premises can assert the immunity and prevent a tax sale of the premises which would have the effect of impeding the United States in the assertion of her right to them until the terms of the contract have been completely performed.

THE NATURE OF THE TAX UNDER MINNESOTA STATUTES.

The tax involved is a real estate tax levied by the Assessor of Ramsey County, Minnesota upon the lands which are the subject of the contract between the United States and S. R. A. The tax records contain the following entries pertaining to the assessment, to-wit (R. 46, 86): Assessed in the name of "S. R. A. Incorporated (subject to fee title remaining in the United States of America)" then follow the description of the property, the assessed valuation and the general tax resulting from the application of the tax rate to the valuation.

Minnesota employs as its scheme of real property taxation the *ad valorem* general property tax. The applicable statutes are set forth in full in the appendix. The tax is assessed against the land and not against the owner. The land is the sole source to which the State may look for the revenue. There is no personal obligation on the part of the owner. State v. Washington County, 207 Minn. 530, 292 N. W. 204.

The Minnesota Supreme Court in the decisions under review recognized this to be the law saying (R. 31):

> "Under our law, real estate taxes are assessed and enforced against the land itself, they are not charges against the person owning the property or his estate. Proceedings to enforce them are strictly *in rem*. In that respect they differ from personal property taxes which are enforced *in personam* although assessed and imposed because of property ownership."

As was said by this Court in Ballard v. Hunter, 204 U. S. 241, 27 Sup. Ct. Rep. 261, 51 L. Ed. 461, with reference to

the Statutes of Arkansas, our statutes "virtually make the land a party to the suit to collect taxes. It is from the lands alone and not from their owner that the taxes are to be satisfied."

The lands are identified and what is called a true and full value is placed thereon by the Assessor (Minnesota Statutes Sec. 273.11). A percentage of this full and true value is taken based upon classification to obtain the assessed valuation (Sec. 273.13). To this is applied a uniform rate based upon the needs for revenue (Sec. 275.09). The tax thus produced becomes a lien upon the land (Sec. 272.31) and upon default in payment, the land is sold by the state (Sec. 280.01). The sale is not affected on account of the use of another name than that of the true owner in describing the ownership of the parcel (Sec. 280.06).

No provision exists for the assessment and taxation of interests in land except by special statutory enactments relating to special subjects such as mineral, gas, coal and oil assessed separate and apart from the surface under Section 272.04. In the definition of "real property" for the purposes of taxation (Sec. 272.03) "all rights and privileges thereto belonging or in anywise appertaining" are included. Under the same section (subd. 3) "personal property" is to be construed to include "improvements made by others upon land, the fee title of which is still vested in the United States."

Personal property taxes are *in personam*, are assessed against the person and not against the property. The person is taxed on account of the property and the value of the property determines the amount of the tax but the liability is purely personal. Clark v. County of Stearns, 47 Minn. 552, 50 N. W. 615.

ARGUMENT.

I. Lands Belonging to the United States Are Immune From Any Form of Taxation By the State of Minnesota in the Absence of Express Congressional Consent.

The Constitution of the United States does not in specific terms deny to the states the right to tax the property of the United States but in the early case of McCulloch v. Maryland, 4 Wheaton 316, this Court definitely established the rule to be that the people of a single state could not, through that state, extend sovereignty to those means employed by Congress to carry into execution powers conferred upon Congress by the people of all of the United States.

The fundamental proposition established by this decision that property belonging to the United States is immune from state taxation would have deprived the State of Minnesota upon its becoming a member of the Union of its right to tax any Federal lands. In the dealings between the United States of America and the State of Minnesota upon admission of Minnesota to the Union, the rule so established was adopted and made a solemn compact. Under the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, it is provided, among other things, as follows:

> "Paragraph 6. And be it further enacted . . . that no tax shall be imposed upon the property of the United States . . ."

The Act of Congress authorizing the State Government, which was adopted by Congress on the 26th day of February, 1857, provided, among other things, as follows:

"Paragraph 5. That . . . no tax shall be imposed upon lands belonging to the United States . . ."

Article 2, Section 3 of the Constitution of the State of Minnesota provides as follows:

"Paragraph 3. Acceptance of enabling act—The proposition contained in the act of Congress entitled, 'An act to authorize the people of the territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on an equal footing with the original states," are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

Congress may, if it chooses, relax the rule of tax immunity of property owned by the United States and may consent to the taxation of such property by the states, but this is a function of Congress, not of the Courts.

In a great many instances in recent years, Congress has expressly consented to state and local taxation of property owned by the United States or by one of its instrumentalities. Thus Congress has expressly consented to state taxation of lands owned by the Reconstruction Finance Corporation, (15 U. S. C. Sec. 610); to state taxation of lands of homestead entrymen, (43 U. S. C. Sec. 455); to state taxa-

tion of lands of desert entrymen, (43 U. S. C. Sec. 455a); to state taxation of real property acquired by the Federal Housing Administrator, (12 U. S. C. Sec. 1714); to state taxation of real property of the Federal Deposit Insurance Corporation, (12 U. S. C. 264p); to state taxation of real property owned by the Federal Home Loan Banks, (12 U. S. C. Sec. 1433); by Federal Land Banks, (12 U. S. C. Sec. 931); by Federal Reserve Banks, (12 U. S. C. Sec. 531); by National Farm Loan Associations, (12 U. S. C. Sec. 931).

Lands granted to railroads are now subject to state and local taxation notwithstanding the fact that the railroads may not be entitled to a patent for Congress has expressly consented to such taxation. 73 U. S. C. Sec. 882.

But Congress has not consented to state or local taxation of properties which are being sold under contract whereby the title is reserved by the United States until full payment of the purchase price.

II. The Power of Congress to Dispose of Federal Lands Is Absolute and Where Conditions Have Been Imposed Either By Congress Or By Administrative Officials Under Congressional Authority, No Taxable Interest Passes To the Purchaser Prior To Full Performance of the Conditions.

The disposition of lands belonging to the United States is strictly a matter for congressional action. Article IV, Section 3, Clause 2 of the Constitution of the United States provides that "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States

* * *;" Article I, Section 8, Clause 18 gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution" all powers vested in the Government or in any department or officer thereof; and Article VI, Clause 2 makes the laws of the United States enacted pursuant thereto "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The contract with S. R. A. is fully authorized by the Act of Congress under which the sale was made, 49 Stat. 885, U. S. C. Title 40 Sec. 304 (a). As was said in the case of United States v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908, "It must be accepted as an act of the Federal Government, warranted by the Constitution and regular under statute."

The power to dispose of the public property is absolute and without limitation, Shannon v. United States, 160 Fed. 870, and Congress may make the disposition on such terms and conditions and subject to such restrictions and limitations as it considers will best promote the public welfare. United States v. Fisher, 11 Fed. 2d 629. The Director of Procurement has no power in the absence of express authority conferred by Congress to dispose of public property. Therefore, the exercise of the power of disposition which was invoked in the contract for the sale of the premises here involved flows directly from the act of August 27, 1935, 40 U. S. C. 304 (a) hereinbefore referred to. The contract so drafted expressly recognizes the continuing title and ownership of the United States and provides the method, and the

only method, by which that title and that ownership may be divested, namely, compliance by the purchaser with the terms of the contract, including full payment of the purchase price.

The question is, "Has the United States by its execution of the contract which is before the Court, divested itself of everything except the naked legal title?" If title to the property passed to S. R. A. under the contract, there would be no occasion for the language requiring performance of certain conditions such as payment of the purchase price before a deed will issue. The intention of the Government to retain title and ownership is further evidenced by the condition permitting conveyance in part before final payment *if* and *only if* the Government is satisfied that no loss to it or impairment of its security will result. The contract itself asserts the only conditions upon which the United States can be stripped of the title to any part or portion of its property.

When the conditions under which real property owned by the United States may be alienated have been prescribed either by Congress or by administrative officials acting under Congressional authority, equitable title sufficient to permit the taxation of such real property by the states does not mature until all such conditions required to be performed by the purchaser to secure a deed have been complied with. Where it is provided that a deed will be executed by the United States when the full amount of the purchase price has been paid, payment of the full amount is a condition precedent which must be performed before *any part of the ownership* of the land passes from the United States. While

any part of the purchase price remains unpaid, the right to subject the property to local taxation does not exist.

This proposition has been established clearly by the decisions of this Court. The first case was that of Railway v. Prescott, 16 Wall. 603, (1872). An act of Congress authorizing the granting of land to a railroad company to aid in the construction of its roads gave to the company alternate sections of land on each side of the road and provided for a patent to issue as each forty mile section should be completed and accepted by the president; provided that before any land could be conveyed to the railroad company "there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or party in interest as the titles shall be required by said company." The railway company completed some forty miles of road which had been accepted by the president but the cost of surveying, selecting, and conveying had never been made and no patent for the land had issued.

The action was originally instituted in the state courts of Kansas by the railway company against one Prescott to quiet title to a tract of land in Kansas, title to which the railway claimed under the Act of Congress of 1862. Prescott set up a tax title to the land for taxes assessed in 1868, with a subsequent sale. The question to be determined was whether or not the property was subject to taxation in 1868 and whether or not the tax title had any validity. The Supreme Court said that if it was owned by the United States, it was not subject to taxation and the sale was void, while if it was owned by the railroad company, it was a proper subject for taxation and the title of the railway

company was divested under the tax sale. The Supreme Court of the United States said:

> "While we recognize the doctrine heretofore laid down by this court, that lands sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is to be understood as applicable to cases where the *right* to the patent is complete, and the equitable title is fully vested in the party without anything more to be paid, or any act to be done going to the foundation of his right.
>
> "The present case does not fall within that principle.
>
> "Two important acts remain to be done, the failure to do which may wholly defeat the right of the company to a patent for these lands.
>
> "The first is the payment of the costs of surveying. It is admitted that this has never been done in the present case. If the company have such an interest in the lands that they can be sold by the State under her power of taxation, then the title is divested out of the government without its consent, and the right to recover the money expended in the surveys is defeated. As the government retains the legal title until the company or some one interested in the same grant or title shall pay these expenses, the State cannot levy taxes on the land, and under such levy sell and make a title which might in any event defeat this right of the Federal Government reserved in the act by which the inchoate grant was made."

This case was followed and approved by Railway Company v. McShane, 22 Wall. 444, (1874), and in Northern Pacific Railway Company v. Rockne, 115 U. S. 600, 6 Sup. Ct. 201, and Irwin v. Wright, 258 U. S. 219, 42 Sup. Ct. 293 (1922).

In Railway Company v. McShane, supra, the State of Nebraska attempted to tax lands of the Railroad granted to it under an Act of Congress providing "that before any land granted by this act shall be *conveyed* to the said company * * * there shall first be paid into the Treasury of the United States, the cost of surveying, etc." This Court said:

> "That the payment of these costs of surveying the land is a condition precedent to the right to receive the title from the government, can admit of no doubt. Until this is done, the equitable title of the company is incomplete. *There remains a payment to be made to perfect it. There is something to be done without which the company is not entitled to a patent.* The case, clearly, is not within the rule which authorizes State taxation of lands the title of which is in the United States.
>
> "The reason of this rule is also fully applicable to this case. The United States retains the legal title by withholding the patent, for the purpose of securing the payment of these expenses, and it cannot be permitted to the States to defeat or embarrass this right by a sale of the lands for taxes. If such a sale could be made, it must be valid if the land is subject to taxation, and the title would pass to the purchaser. If no such title could pass, then it is because the land is not liable to the tax; and the treasurers of the counties have no right to assess it for that purpose.
>
> "But when the United States parts with her title, she has parted with the only means which that section of the statute gives for securing the payment of these costs.
>
> "It is by retaining the title that the payment of costs of survey is to be enforced. And so far as the right of

the State to tax the land is concerned, we are of opinion that when the original grant has been perfected by the issue of the patent, the right of the State to tax, like the right of the company to sell the lands, has become perfect." (Italics supplied.)

The same question arose in Northern Pacific Railway Company v. Rockne, supra. The previous cases were followed, the Court saying:

"Again, it is said that, since the road was built before this tax was levied and the company had earned the land, its equitable title was complete, and, according to the decisions of this court, it was subject to taxation. The same point was urged in Railway Co. v. Prescott. But the court said that 'this doctrine was only applicable to cases where the right to the patent is complete, the equitable title fully vested, without anything more to be paid or any act to be done going to the foundation of the right.' But it added, in that case, that two important acts remained to be done, the failure to do which might wholly defeat the company's title. One of these was payment of the costs of surveying. It may be well to restate the grounds on which this decision rests. The United States made a magnificent grant to this company of lands equal in quantity to forty or fifty thousand square miles, an area as large as an average state of the Union. It thought proper to require of the grantee the payment of the costs of making the surveys necessary to the location and ascertainment of these lands. To secure the payment of those expenses, it decided to retain the legal title in its own hands until they were paid. The government was, as to these costs, in the condition of a trustee in a conveyance to secure payment of money. But, if the land was liable to be sold for taxes due to

state, territorial, or county organizations, this security would be easily lost. No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. *A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this, it is because the assessment is void.*

"It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such a title, it is because there exists *no authority to make it.* At all events, the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid. We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation. The remedy lies with congress, and is of easy application. If that body will take steps to enforce its lien for these costs of survey, by sale of the lands or by forfeiture of title, the treasury of the United States would soon be reimbursed for its expenses in making the surveys, and the states and territories, in which the lands lay, be remitted to their appropriate rights of taxation. The courts can do no more than declare the law as it exists." (Italics supplied.)

This Court held in Irwin v. Wright, supra, that a homestead entryman had no interest in lands acquired under the Homestead Act which were subject to taxation by the State of Arizona where the entryman had fulfilled the requirements of the Homestead Act but had not performed the additional conditions required by the Reclamation Act and the regulations of the Secretary of the Interior issued pursuant thereto, such as payment of installments of water charges. This Court recognized the limitation on the power of the state to interfere with the disposition of Federal lands and reaffirmed and readopted its rule as established in the decisions cited above, in this language:

> "The rule established by the decisions of this court is that, by virtue of its sovereignty and the constitutional power of Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, no state can tax the property of the United States within its limits. This was recognized and enforced by the Enabling Act of June 20, 1910 (36 Stat. 557), under which Arizona was, on February 14, 1912, admitted to the Union, for that act contained an express declaration that lands and property belonging to the United States or reserved for its use were exempted from taxation. * * * An exception to this principle, or rather its nonapplication, is recognized where the government has by final certificate parted with the equitable title to a person subject to state taxation, and retains only the legal title by its delay in issuing the patent. *Not until the equitable title passes can the state tax the entryman*, except in case of mining claims (the reason for which we shall presently consider), and in cases in which express authority to tax is given in the statute. * * * (Italics supplied.)

"The county authorities in this case were in error in supposing that an equitable title passed from the government to the entrymen here, when the latter had fulfilled the requirements of the Homestead Act. Had their entries been controlled solely by that act, they would have been right. But, as we have seen, their entries were made under that act as supplemented and qualified by the Reclamation Act; and the latter expressly entails on such entrymen additional conditions which must be performed before an equitable title or a right to a patent is secured."

The Supreme Court of the State of Minnesota in its opinions in these present causes has shrugged away these decisions of the United States Supreme Court and has attempted to distinguish them from cases in which a contract of purchase has been entered into between the Government on the one hand as the seller and an individual on the other hand as the buyer. In the cases cited above, heretofore determined by this Court, the contract was expressed in effect in the Act of Congress itself. In the cases which are now before the Court, the contract is expressed in a written instrument executed by the Director of Procurement under authority of the Act of Congress and pursuant to the Act of Congress. In each instance, Congress is exercising its authority to dispose of Federal lands and is prescribing the conditions upon the performance of which a patent or a deed, as the case may be, will be given.

In the decisions of the lower court, the agreement between the United States of America and S. R. A. 's treated the same as a contract for deed between individuals. Reasoning from this premise, the lower court determined that the equit-

able title vested in S. R. A. with the bare legal title remaining in the Government as security for payment of the purchase price citing state court decisions relating to such contracts for deed to sustain its conclusion.

That Court has cited as authority for its conclusions L. 1907. C 328 Sec. 1, now Minn. St. 1941, Sections 287.01, 287.02, 287.03, 287.04 (R. 32-33). The Court did not deem it necessary to point out that these sections have to do *only with the mortgage registry tax* of the State of Minnesota. We have set out so far as essential, in the appendix, the original enactment with the Legislative title. It will be observed that "an executory contract for the sale of land * * * shall be deemed, *for the purposes of this act*, a mortgage of said land for the unpaid balance of the purchase price." Yet it is largely upon the language of this statute, which is limited in its scope to the mortgage registry tax, that the decisions of the lower court are based.

The agreement here involved is something other than a contract for deed between individuals. It is an agreement entered into by the Director of Procurement under authority granted by an Act of Congress prescribing that certain specified terms and conditions must be met and performed before the United States will be divested of any of its title or ownership in the lands which are the subject of the agreement.

Other courts have readily perceived the similarity existing between the railway grant cases, the homestead entrymen cases and cases such as these which are now before the Court for review. In the State Court decisions in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130,

Copp v. State, 90 W. Va. 444, 71 S. E. 580, A. B. R. Corporation v. City of Newark, 35 Atl. 2d 473, People v. Burke, 142 N. E. (N. Y.) 320 and 222 N. Y. S. 882, in the decision of the Circuit Court of Appeals for the Ninth Circuit in Lincoln Co. v. Pacific Spruce Corporation, 26 Fed. 2d 435, and in the U. S. District Court decision in U. S. v. City of Milwaukee, 100 Fed. 828, the precise situation to be considered in this case was presented and in each case it was held that the land in question was not subject to taxation so long as legal title remained in the United States until all conditions required to be performed by the purchaser, including full payment of the purchase price, had in fact been performed.

Textwriters generally have accepted the conclusions reached in these decisions as law; the precise proposition which we maintain is set forth in 51 Am. Jur. (published in 1944) at Page 285 as follows:

> "If land once owned and used by the United States for governmental purposes is sold to private persons pursuant to an Act of Congress and the legal title retained to secure the future payment of any part of the purchase money, it is not liable to taxation by the state or by any of the state's governmental agencies so long as the lien in favor of the United States remains unsatisfied."

Until the first decision in the cases here sought to be reviewed, no contrary opinion had ever been written by a court of final jurisdiction. The point was settled. S. R. A., the purchaser under the contract in these causes, was justified in assuming from this unanimity of opinion that such would continue to be the law. The only decisions to the contrary

known to Petitioner are the S. R. A. cases now before the Court for review and the case of Ken Realty Company v. Johnson, 138 Fed. 2d 809 (1943, decided by the U. S. Circuit Court of Appeals for the Fifth Circuit).

In the case of United States v. City of Milwaukee, 100 Fed. 828 (1893), pursuant to Congressional authority, the Secretary of the Treasury sold the federal building in Milwaukee to Gates for a purchase price of $256,000.00, one-fourth to be paid in cash and the baiance in three equal annual installments plus interest. The government agreed to convey the title by quitclaim deed to the purchaser upon full payment of the purchase price, and it was agreed that the government occupy the building until the completion of the new federal building. When one-half of the purchase price had been paid, the City and County of Milwaukee levied and sought to collect taxes upon the property. This the Court enjoined, saying:

> "* * * Here there remains one-half of the total sum now due and unpaid. In the judgment of the court, these facts exempt this property from taxation. It may be that the purchaser may not complete his payments, in which case the title will remain in the United States of America. And so long as the government has a monetary interest in the property, retaining the legal title, the property is the property of the United States, so far as the question of taxation is concerned. It is true, the government holds the title in trust for the purchaser, so far as he has made payments; but that is liable to be extinguished by forfeiture for non payment of the retnainder, and until the purchase price of the property has been fully paid, and the whole equitable interest in the property vested in the purchaser, and

> nothing remains but for the United States to issue its patent pursuant to the agreement, in the judgment of the court that property is not subject to state taxation. * * * "

Copp v. State, 69 W. Va. 444, 71 S. E. 580, 35 L. R. A. (N. S.) 669 (1911) involved the sale of an old post office, as does the case now before this Court. There the Secretary of the Treasury of the United States, in 1908, sold the old customhouse and postoffice lot and building in Wheeling, West Virginia, to C. H. Copp and his associates at public auction for $118,500.00. By the terms of the sale, one-fourth of the purchase price was payable in cash and the balance in one, two and three years, with interest, the government retaining title until the full purchase price should be paid, and then to make a quitclaim deed to the purchasers. The State levied taxes upon the property for the year 1909 and by appropriate proceedings the purchasers challenged the right of the state to tax the property. The West Virginia Supreme Court of Appeals held that the property could not be taxed by the state as long as any portion of the purchase price remained unpaid. The court said:

> "The legal question which the record presents is: Has the United States government such an interest in the property as entitles it to be exempt from taxation by the state for the year 1909? It has the legal title and a vendor's lien upon it for three-fourths of the purchase price. None of the deferred payments were due when the taxes for that year were assessed. Do these facts not show that the government has such an interest in, or claim upon, the property, as will exempt it from state taxes? Section 3, Chap. 1, Code 1906, expressly exempts the property in question from all

taxes 'so long as the United States shall be the owner thereof.' But the question must be decided independent of the statute, for the reason that no state has the power to tax any of the agencies of the United States government without its consent. We must be governed by the decisions of the Supreme Court of the United States, because the rule announced by it is the supreme law of the land in this question. * * *"

The court then reviewed a number of United States Supreme Court decisions and concluded:

"* * * In view of these decisions, we are bound to hold that the land purchased of the United States by C. H. Copp and his associates is not liable for state, county or district taxes, so long as the United States has any claim upon it for any portion of the purchase money. If it were subject to taxation, it would also be liable under our statute law to be sold for their non-payment, and in such case, if not redeemed, complete title to the entire interest in the land would pass to the tax purchaser. Under the West Virginia statute, it is not alone the interest of Copp and his associates in the land that is taxed, but it is the entire interest and estate therein on which taxes are assessed, and to suffer it to be taxed, so long as any portion of the purchase price remains unpaid, might operate as a serious embarrassment to the government in the enforcement of its claim for the purchase money. * * *

"We do not think the fact that Copp and others have not the legal title to the land would affect the question of its taxability by the state, provided they were the complete equitable owners, and were in a position to demand a conveyance; but we are clearly of the opinion that, according to the decisions herein cited, the state has no right to tax the land, while the United

States government has any claim upon it for any portion of the purchase money. * * *"

In the case of Lincoln County v. Pacific Spruce Corporation, 26 Fed. (2nd) 435 (C. C. A. 9th Circuit, 1928) the United States Spruce Corporation, as vendor, entered into a contract in 1920 with the Pacific Spruce Corporation, as purchaser, to sell real property in Lincoln County, Oregon. By the terms of the contract, the purchase price of $2,000,000.00 was payable in installments and title was to remain in the vendor until the full purchase price was paid and the other terms and conditions of the contract fully complied with by the purchaser. The vendor, United States Spruce Corporation, was an instrumentality of the United States and enjoyed the tax immunity of the United States. In 1926, when approximately one-half of the purchase price had been paid, Lincoln County imposed a tax on the estate, title and interest of the purchaser in the property covered by the contract, except the paramount interest of the United States, and the County threatened to impose a like tax for 1927. A suit was then instituted by the purchaser to cancel the 1926 tax and to restrain the imposition of a like tax in 1927.

The Circuit Court of Appeals for the Ninth Circuit affirmed a decree favorable to the plaintiff and held that neither the land nor the interest of the purchaser was taxable by the state until the entire beneficial and equitable title to the property should be vested in the purchaser and the consideration fully paid. The court said:

"It is well settled, of course, that when an entryman or purchaser from the United States has fully complied

with all the requirements of law or his contract of purchase, and nothing remains to be done but the issuance of a patent or the execution of a deed, the government becomes a mere naked trustee of the legal title, and the property is subject to state taxation. But it is equally well settled that, before lands granted or sold by the United States can be taxed by the states as the property of the beneficial owner, a perfect equitable title must be vested in the grantee or purchaser, and the consideration and other conditions of the grant or sale must be fully paid and performed. As long as the government retains the legal title as security for the payment of any part of the purchase money, or to secure the performance of any other conditions of the grant or sale, the land is not subject to taxation by the states."

We call the attention of the Court particularly to the case of A. B. R. Corporation v. City of Newark et al, decided by the Supreme Court of New Jersey, January 19, 1944, 131 N. J. L. 147, 35 A. 2d. 473, and the same case on appeal, decided by the New Jersey Court of Errors and Appeals on April 19, 1945, 133 N. J. L. 34, 42 A. 2d. 296.

This case is almost "on all fours" with the cases under review and involved the question of the taxability of the old Post Office and Court House site in Newark, New Jersey, which had been sold by the United States Government on January 27, 1941, under a deferred payment contract by which the first installment of thirteen annual installments became due February 27, 1945. The contract provided that upon full compliance with all the terms of the agreement, title deed was to be delivered to the purchaser, or his nominee, on February 27, 1951, when a purchase money mortgage was

to be given to secure the balance of the purchase price. Possession of the premises was delivered to the purchaser in 1941. The City undertook to tax this property for the years 1942 and 1943. The Supreme Court of New Jersey held that the property was not taxable, that before the property would be taxable, the purchaser must have performed all the terms of the contract entitling him to a conveyance of the legal title. Upon appeal to the New Jersey Court of Errors and Appeals, that Court affirmed the judgment of the Supreme Court. The Court of Errors and Appeals affirmed the judgment for the reasons expressed in the opinion of the Supreme Court. Since the appellate court's opinion is very short, we set it out in full:

"PER CURIAM:

The judgment is affirmed for the reasons expressed in the opinion of Mr. Justice Porter for the Supreme Court.

The opinion says: 'Certainly Bratter had no equitable estate in the property which would justify any such assessment to be taxable. His equitable title must be vested and perfected by full performance of the contract.' In our view, the question is whether all the conditions precedent to a conveyance of the legal title have been fulfilled by the vendee. In that event, the Government holds the bare naked title and a nominal interest, and the whole value is taxable to the equitable owner. Until all the conditions precedent have been performed, the lands are the property of the Government and exempt from taxation by the state. This is the principle of the case of New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. Ed. 693, reiterated in the case of United States v. County of Allegheny, 322 U. S. 174, 64 S. Ct. 908, 88 L. Ed. 1209.

> The common law doctrine of equitable conversion upon the execution of a contract for the sale of land is not applicable. *Until the vendee of a contract for the sale of land owned by the Government is entitled to a conveyance of the title by the performance of all conditions precedent, his mere possessory right is not taxable by the state.*" (Italics supplied.)

In Ken Realty Company v. Johnson, 138 Fed. 2d 809, the United States Circuit Court of Appeals reached a novel conclusion, holding that the purchaser under such a contract as is involved here which reserved title in the United States had an interest subject to taxation under Alabama laws, the value of the interest being measured each tax year by the value of the whole property diminished by the amount of the unpaid purchase money.

In United States v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908, decided May 1, 1944, this court invalidated the imposition of a state *ad valorem* tax on real estate to the extent that it was based on the value of machinery owned by the Federal Government and leased to Mesta Machine Company where it became a part of the real estate under Pennsylvania taxing law.

Mesta Machine Company was engaged in the manufacture of large field guns for the United States under a cash-plus-a-fixed-fee contract in which taxes levied against the Company were reimbursable cost items. Mesta owned a plant with some machinery. The Government leased machine tools which were transferred to Mesta from other production locations. Mesta was required to manufacture or purchase certain other machine tools which after inspection and acceptance became the property of the United States and in

turn were leased to Mesta. The machinery owned by the Federal Government was affixed to the realty in such a way that it could be removed without injury to the premises.

Allegheny County, Pa., levied a real property *ad valorem* tax against Mesta's mill and in valuing the real estate for the purposes of the assessment included the value of the machinery owned by the Government. The Supreme Court of Pennsylvania in U. S. v. Allegheny, 32 Atl. 2d 236, held that the tax was levied on the mill as an entity and that since the record showed that title to the land was in the Mesta Company, the assessor was not obliged to go further; that under the state law, regardless of who held the title to it the machinery constituted a part of the mill for purposes of assessment and was properly assessed as real estate; that property of the United States was beyond the pale of state taxation; but that this assessment was not against the United States but against Mesta, which was operating the mill for private purposes and that the tax was valid.

This Court considered the real controversy to be, "especially in view of recent decisions" whether the taxing authorities of Pennsylvania had infringed the admitted immunity of possessions, institutions and activities of the Federal Government from any form of state taxation in the absence of express congressional consent.

It was held by this Court that an *ad valorem* tax is a tax against property not persons and its procedures more nearly in rem than in personam; that it is predicated upon jurisdiction of the property rather than of its owner and that where the machinery was separately valued and assessed and included in the value of the land, the tax was an *ad*

valorem tax on the machinery and therefore on property owned by the United States.

It was further held that the state law was not decisive of the question of title. The Court had this to say:

> "Procurement policies so settled under federal authority may not be defeated or limited by state law. The purpose of the supremacy clause was to avoid the introduction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls. The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any state."

The case of United States v. Board of Commissioners, 145 Fed. 2d 329, certiorari denied January 29, 1945, 65 Sup. Ct. Rep. 563, 89 L. Ed. 478, involved the immunity from taxation of lands held in trust by the United States for certain Indian tribes. The following language of the Circuit Court of Appeals is noteworthy:

> "These lands were acquired with funds belonging to the Indians; and under section 6, supra, the title is held in trust for the Tribes. But the legal title is in the United States. Generally, the possession of the legal title by the United States determines the fact and right of ownership in respect of immunity from taxation under state authority. Wisconsin Railroad Co. v. Price County, 133 U. S. 496, 10 S. Ct. 341, 33 L. Ed. 687. And *where the legal title is in the United States, lands are not subject to state or county taxes* even though

the United States holds them in trust for an Indian or a tribe." (Italics supplied.)

The Supreme Court of Minnesota rests its decision in part upon the authority of City of New Brunswick v. United States, 276 U. S. 547, 48 Sup. Ct. 371, 72 L. Ed. 693. In that case, it appeared that the United States Housing Corporation as an instrumentality of the United States Government acquired title to property in the City of New Brunswick during the first World War. Upon the conclusion of the war, Congress authorized the Housing Corporation to sell and convey its property, but provided that no sale or conveyance on credit should be made without reserving a first lien for the unpaid purchase money. The Housing Corporation entered into contracts for the sale of various lots providing for the purchase price to be paid in monthly installments, a deed to be issued by the Housing Corporation upon payment of 10 per cent of the purchase price, the purchaser to execute a mortgage back for the balance of the purchase money. The purchasers took possession of the property and paid the 10 per cent entitling them to a deed. Because the city in the meantime had assessed taxes against the property, the Housing Corporation refused to execute deeds to the purchasers and the latter, of course, did not give the mortgages contemplated by the contract. While the Housing Corporation continued to hold legal title and after the 10 per cent of the purchase money had been paid, the city assessed the lots for taxation to the purchasers. This Court held that the purchasers had become the equitable owners of the lots, that in equity, the situation should be considered as though the contracts had been performed by a conveyance from the Housing Corporation to the purchasers

and the giving of mortgages by the purchasers to the Housing Corporation and that the taxes were valid and could be enforced by sales of the interests of the purchasers if such sales were authorized under New Jersey law and if they were made expressly subject to the rights, liens and interests of the Housing Corporation. The Court said:

> "It is unquestioned that so long as the corporation held title to the lots as an instrumentality of the United States and solely for its use and benefit, they were not subject to taxation by the city. Clallam County v. United States, 263 U. S. 341, 344, 68 L. Ed. 328, 331, 44 Sup. Ct. Rep. 121. But after the purchasers had made the payments entitling them to receive deeds to the lots, the corporation ceased to hold title solely for the United States, and held partly for the purchasers, who had become the equitable owners of the property and entitled to conveyance of the title subject to their obligation to execute mortgages securing the payment of the balance of the purchase price. In equity the situation was then the same as if the corporation had conveyed title to the purchasers, as owners, and they had mortgaged the lots to the corporation to secure the unpaid purchase money. As between the corporation and the city, the taxability of the lots is to be determined as if both the deeds and the mortgages had been executed; that is, as if the corporation, while conveying the legal title to the purchasers, had retained a mortgage lien to secure the balance of the purchase price.

The New Brunswick case is in accord with the cases previously decided by this Court as well as with those decided by lower Federal courts and by state courts. The purchasers had performed all conditions and had paid the consideration which entitled them to a conveyance. This Court viewed

the situation as though legal title had actually vested in the purchasers. It constitutes an affirmation of the previous decisions of the Court since the purchasers were lawfully entitled to have the legal title to the property vested in them.

The decision in the case of Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, makes it clear that the New Brunswick case is not a departure from the previous decisions of this Court on the subject of tax immunity, saying:

> "The recent case of City of New Brunswick v. United States, 48 S. Ct. 371, 72 L. Ed.——, decided by the Supreme Court April 9, 1928, is not to the contrary. In that case the Housing Corporation entered into contracts for the sale of lots, the stipulated price to be paid in installments. The contracts provided that the vendor should execute special warranty deeds for the property upon the payment of 10 per cent of the purchase price, and that the purchasers should execute and deliver a note or notes, with mortgages on the property to secure the balance of the purchase price, in accordance with the terms of the contracts of sale. The purchasers paid the 10 per cent of the purchase price as agreed, and thus became entitled to deeds; but the Housing Corporation refused to execute the deeds, because of some controversy over taxes assessed against the property by the city. Under these facts, the court held that the property was subject to taxation, but that the lien of the vendor for the unpaid purchase price was superior to the tax lien, because of a provision in the statute authorizing the sale: 'That no sale or conveyance shall be made hereunder on credit without reserving a first lien on such property for the unpaid purchase money.'
>
> "It will thus be seen that the purchasers had complied with all the conditions of the contract, so as to

entitled them to deeds, and the case was therefore controlled by the general rule to which we have referred. The court did not hold, as we understand it, that the property was subject to taxation by the city simply because the purchasers had paid 10 per cent of the purchase price under the executory contracts of sale. If it did so hold, the decisions would seem to be contrary to earlier decisions of the same court and to the other authorities we have cited."

The New Brunswick case is akin to the decision of this Court in Baltimore Shipbuilding Company v. Mayor, 195 U. S. 375, 25 Sup. Ct. 50, where it was held that the real estate of the Shipbuilding Company was subject to taxation by the City of Baltimore. The title to the property was not in the United States but in the Shipbuilding Company, with a condition subsequent of defeasance predicated upon a duty on the part of the company to allow Government vessels to put into dry dock for repairs. The Shipbuilding Company undertook to evade the payment of local taxes on the ground that the United States had an equitable interest in the title to the property, claiming that the case came within the general rule of taxation of property belonging to the Federal Government. This Court properly held that the fee was in the Shipbuilding Company and that the property was subject to taxation.

In the case of Irwin v. Wright, 258 U. S. 219, 43 Sup. Ct. 293, supra, this Court distinguished a case analogous to the Baltimore Shipbuilding Company case and the New Brunswick case. The case distinguished was United States v. Canyon County, 232 Fed. 985, where a patent had issued conveying a fee in land subject to a lien of the United States

superior to all others for future installments of water rents. This Court said:

> "The patent vested the full legal title in the entryman. The fact that a lien was reserved on the face of the patent prior in right to all other liens for installments of water charges to fall due in the future did not prevent this and the giving patents indicated an intention on the part of the Government that it should be land of the entrymen and of course it became taxable as such. Baltimore Shipbuilding Company v. Mayor et al, 193 U. S. 375, 25 Sup. Ct. 50, 49 L. Ed. 242."

III. S. R. A. Has No Equity Which Is Subject To State Taxation.

The Assessor in listing the premises in the cases now before this Court assessed them in the name of "S. R. A. Incorporated subject to fee title remaining in the United States of America." The name under which a parcel of land is assessed is of no significance under Section 280.06 Minnesota Statutes (appendix). The State taxing athorities have contended and the Minnesota Supreme Court has determined that the Assessor by this act assessed the equity or the equitable interest of S. R. A. in the premises and that the superior right or title of the United States is unaffected. We shall endeavor later in this brief to demonstrate that no such interest if it exists can be assessed or taxed under the taxing statutes enacted by the Minnesota Legislature. But, assuming statutory authority for the taxation of interests, no taxable interest exists under the contracts here being considered until all conditions have been performed by the purchaser. The Supreme Court of the United States has ruled directly that the equity of the vendee may not be as-

sessed and taxed, in the case of Irwin v. Wright, 258 U. S. 219, 42 Sup. Ct. 293, where Chief Justice Taft said:

> "It is argued that it is not government property which is sought to be taxed here before final certificate, but only the interest of the entrymen. In the case at bar, the taxes were in the first instance assessed against the land, but later the board of supervisors changed the form of the assessment, so as to insert the word "equity" in the record. The power of the supervisors, under the Arizona statutes, to order such a change in past assessments is challenged. We do not think it necessary to decide this. It is enough to say that the entrymen did not have the equitable title until they received the final certificate, and their interest in the government's land, until that issued was for the reasons given, not taxable. Whether an interest like that of the entrymen in land not belonging to the government would be taxable property, we have no occasion to consider."

And in the case of Flint Realty Company v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, it is said:

> "The attempt is made to take this case out of the general rule by showing that the United States by article of agreement had sold and agreed to convey the property to the appellee, and this company being in possession, receiving rents, and exercising all rights of ownership, has such an equitable title as to subject the property to taxation in its name. This contention would be perfectly sound if the rule of taxation applicable thereto could be determined by Pennsylvania law. The difficulty, however, is that in the present case our state law has no application, and it becomes necessary to look to the decisions of the federal courts in order to determine the rights of the parties."

In Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, supra, the county imposed a tax upon the estate, right, title, and interest of the purchaser, except the paramount interest therein of the United States.

The Court had this to say about equitable titles and equities:

> "It is sometimes said that the purchaser under an executory contract of sale is the owner in equity, even before the payment of the purchase price; but within the rule we are now discussing the equitable title means only such as vests in the purchaser upon payment of the purchase price in full, leaving nothing but naked legal title in the vendor, for it would seem that the equitable title of the homesteaders in the case to which we have referred was superior to the rights of the purchaser in this case, where the title was reserved by the vendor until the purchase price was fully paid and all other conditions of the contract fully complied with. In other words, there was reserved, not only the naked legal title, but the equitable title as well, and the final test is: Has the government parted with everything except the naked legal title? If so, the property is subject to taxation; otherwise, it is not."

The idea of taxability of the so-called "equitable ownership" of the purchaser is refuted by the Court in A. B. R. Corporation v. City of Newark, 133 N. J. L. 34, 42 A 2d 296, in this language:

> "Until the vendee of a contract for the sale of land owned by the Government is entitled to a conveyance of the title by the performance of all conditions precedent, his mere possessory right is not taxable by the state."

IV. Separate Interests In Land Are Not Taxable Under Minnesota Statutes.

Where a Federal right is concerned, the Supreme Court of the United States is not bound by the characterization given to a state tax by the state courts, or relieved by it from the duty of considering the real nature of the tax and its effect upon the Federal right asserted. Carpenter v. Shaw, 280 U. S. 363, 50 Sup. Ct. 121, 74 L. Ed. 478. U. S. v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. 908.

The Supreme Court of Minnesota has assumed that equities or equitable interests are taxable without discussing the question or citing any statutory enactments to that end. The power of taxation is a legislative function and taxes can be levied and collected only under statutory authority. If the legislature fails to provide for the taxation of separate interests in land the Courts are not authorized to supply the omission and to adjudge the separate interests subject to taxation. City of New Orleans v. Stemple, 175 U. S. 309, 44 L. Ed. 174, 20 Sup. Ct. 110. In the first opinion (R. 31), the Minnesota Court recognized the validity of the rule for it expressly states that "it is for the Legislature to devise the mode, form and extent of taxation to be imposed." This being true it follows that taxes can be imposed only under statutory authority and in the manner provided by law. Neither the taxing authority nor the Minnesota Supreme Court has cited any statutory or legislative authorization for the taxation of any interest less than the whole.

The attempt of the Court to usurp this legislative prerogative and to itself create a new object of taxation is an interference with this exclusively legislative function and results

in the violation of S. R. A.'s rights under the 14th Amendment to the Constitution of the United States. Frick v. Pennsylvania 268 U. S. 473, 45 Sup. Ct. 603. The assessor cannot determine what shall and what shall not be taxed. That is the function of the Minnesota legislature, and unless it has so provided, the interest of S. R. A. in the premises affected, even if the premises are not immune from taxation as being the property of the United States, cannot be assessed and taxed separately so as to make the assessment valid.

Section 272.03 Minnesota Statutes 1941 (appendix), defines real property for the purposes of taxation, and includes therein "the land itself, and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining." All interests are included in the assessment of the land itself and no assessment can be made upon this property, unless it is against the interest of the United States. There is no statutory authority whatsoever for the assessment of an interest less than the entire fee estate.

Section 273.19, Mason's Minnesota Statutes, (appendix) provides that "property held under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same."

Obviously, the purpose of the section is to make taxable that which was not previously taxable. The Legislature did not subscribe to the conclusions reached by the Minnesota

Supreme Court. It expressly provides that "for purposes of taxation" the property shall be considered as that of the vendee indicating at least, that without the statute, it would be the property of the Vendor.

The Court will observe, as further evidence that the State of Minnesota does not consider the real estate in this case as taxable, that property held under a contract for the purchase thereof when such property belongs to the United States has not been included in the foregoing statute. And properly so, for under the cases cited, and under the provisions of our State Constitution, such a provision would be void. It may further be said that this section is the only statute presuming to give authority to tax property to the purchaser under a contract. Since the statute specifically enumerates the circumstances to which it shall apply, and the instant case is not covered, the property here, in any event, cannot be taxed "as the property of the person so holding the same." Of course, it is our contention that even if the United States were included in this statute, the property still could not be taxed as the property of the person holding the same, because in truth and in fact; it is the property of the United States of America and is exempt from taxation by the State of Minnesota.

Section 273.19 gives no authority to assess and tax the equity of the vendee. Even under this statute, the entire property is taxed. And the tax lien arising is valid against the vendor upon cancellation by it of the vendee's rights under the contract. See State vs. County of Washington, 207 Minn. 530, 292 N. W. 204.

So that if it did cover land sold under contract by the United States, the statute would be unconstitutional as vio-

lating Article 2, Section 3 of the Constitution of the State of Minnesota, since the tax lien would be superior to the rights of the United States.

The situation here presented has been recognized by the Legislature of the State of Minnesota as giving no basis for levying a tax upon the real estate, for under the personal property taxing statutes, Mason's Minnesota Statutes, Section 272.03, it is provided that "Personal property for the purposes of taxation shall be construed to include all improvements made by others upon lands the fee of which is still vested in the United States."

From this statute it appears that the Legislature has long recognized the immunity as claimed here and has enacted this provision in an effort to reach the improvements made on land purchased from the United States of America prior to the time when the land itself may be taxed by the State.

If the assessment of tax here attempted is valid the State must, of necessity, have a lien or a right which can be enforced under the existing statutes. It then becomes pertinent to inquire as to the nature of the title which the State may sell at a tax sale under this assessment. Can it sell free and clear of the rights of the United States? Clearly it cannot if by the terms of the assessment the tax is subordinate to the United States. But can there be a tax sale subject to the rights of the United States?

Until the full purchase price is paid, the United States has an interest in these lands, for the enforcement of which certain remedies are afforded to it. The taxes levied by the State are on the land and not on the interest of the purchaser, State vs. Washington County, 207 Minn. 530 supra. The entire proceeding is one in rem, and the tax is on the land

regardless of the guise adopted to conceal the tax levy or provisos or conditions recited. The tax sales under State law, if valid, would convey the land and extinguish the lien and rights of the United States. The State law makes no provision for selling the interest of the vendee under a contract nor for making tax sales subject to the right of the United States.

A decree not adjudging the taxes entirely void, but determining them inferior to the rights of the United States, and requiring the State in making tax sales and issuing deeds to recite that they were subject to the rights of the United States amounts to writing a new tax law for the State of Minnesota.

In Hacklander vs. Parker, 204 Minn. 260, 283 N. W. 406, the court said:

> "The purchaser at a tax sale derives his title not from the former owner of the land but from the state. A tax title is a new and original grant from the State as sovereign of title in fee, which is paramount as against the world and which supersedes and bars all other titles, claims and equities."

A tax assessment can be of no greater force or validity than the right and power to enforce its collection. The United States Supreme Court made this clear in Northern Pacific Railway Company vs. Rockne, supra, stating:

> "No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. *A valid sale, therefore, for taxes, being the highest ex-*

ercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this it is because the assessment is void.

"It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the cost of surveying these lands. If, on the other hand, the sale would not confer such title, it is because there exists no authority to make it. At all events the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid." (Italics supplied.)

It is significant that the statutes of the State of Minnesota on this subject indicate complete agreement with the foregoing expressions of the United States Supreme Court. Section 279.16, Minnesota Statutes provides the form of judgment in tax sales by the state, and requires that the judgment contain a recital that "the amount of the taxes, penalties, and cost to which, as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature in law or equity, of every person, company, or corporation, whatsoever; and it is adjudged that unless the amount to which each of said parcels is liable be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable."

Section 280.03 recites the form of certificate to be issued to the purchaser at a tax sale and provides that "if the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever."

To the same effect is Section 280.11. And Section 280.25 providing for the issuance of a deed in the name of the State, reads:

> "* * * And every such deed shall vest the grantee with complete title to such lands subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at said tax sale had been paid."

V. By Including the Interest of the Government In the Valuation of the Land, the State Has Subjected That Interest To Taxation.

In determining the value of the land for the purposes of taxation, the value of all interests was embraced by the Assessor, including the interest of the United States (R. 46, 86-87). The property in question was assessed and taxed as all other real property in the County and without deduction of any amount due the United States under the contract for deed. In the Mesta case (United States v. Allegheny County, supra), this Court held that the same result was reached by including the value of the machinery owned by the Government in the assessment of the land as would have been reached if the machinery were taxed in form. "The substance of this procedure" in the language of this Court "is to lay an ad valorem general property tax on property owned by the United States." This Court further said in that decision "The procedure of the Assessor is consistent with no other theory than that the machinery itself was being assessed and taxed exactly as land was being assessed and taxed. * * * We discern little theoretical difference and no practical difference at all between what was

done and what would be done if the machinery were taxed in form."

If we assume that an equity exists which is subject to taxation by the State of Minnesota and that the equity is taxable under Minnesota Statutes, it is still clear that the Assessor has erred in including for the purposes of taxation the value of the interest of the United States in the property. If the foregoing assumptions are correct, then the case should be governed by the rule set forth in Ken Realty Company v. Johnson, 138 Fed. 2d 809, that the value of the interest of the purchaser which is to be taxed is to be measured each tax year by the value of the whole property diminished by the amount of the unpaid purchase money.

VI. The Purchaser Can Assert the Claim That the Premises Are Immune From Taxation.

The Supreme Court of the State of Minnesota has advanced as one of its reasons why the tax should be sustained that S. R. A. is not in a position to champion the Federal Government's tax immunity (R. 37).

The tax against the premises here involved is invalid because there exists no authority on the part of the State of Minnesota to levy, assess or collect it. The Petitioner, as the purchaser of the premises, can assert the immunity and prevent a tax sale of the premises which would have the effect of impeding the United States in the assertion of her right to them until the terms of the contract have been completely performed. This Court in United States v. Allegheny County, supra, expressed the law and the supporting authorities clearly in these words:

"We think, however, that the Government's property interests are not taxable either to it or to its bailee. The "Government" is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed as we have held. But neither he nor the Government can be taxed for the Government's property interest. Rarely does a state or municipality pursue the Federal Government itself. Most of the immunity cases we have been called upon to deal with involved assertion of a right to tax Government property against an individual. In United States v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 483, 47 L. Ed. 532, this Court decided that improvements made upon lands to which the United States held title but which were put in possession of Indians for their benefit remained immune from taxation and that cattle, horses, and chattels purchased with the money of the Government and "put into the hands of the Indians to be used in execution of the purpose of the government in reference to them" were likewise immune from taxation. In Van Brocklin v. Tennessee, 117 U. S. 151, 6 S. Ct. 670, 29 L. Ed. 845, Tennessee attempted to sell for state taxes lands which the United States owned at the time the taxes were assessed and levied, but in which it had ceased to have any interest at the time of sale. There, as here, it was claimed the collection affected only private persons, whose equities in the matter were at least doubtful, and that the United States could suffer no harm. The Court held, however, that the immunity protected the private owner for the tax had been laid against an interest of the Government

which was beyond the reach of state taxing power. See also Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. Ed. 573; Lee v. Osceola & Little River Road Improvement District, 268 U. S. 643, 45 S. Ct. 620, 69 L. Ed. 1133.

"A state may tax personal property and might well tax it to one in whose possession it was found, but it could hardly tax one of its citizens because of moneys of the United States which were in his possession as Collector of Internal Revenue, Postmaster, Clerk of the United States Court, or other federal officer, agent, or contractor. We hold that Government-owned property, to the full extent of the Government's interest therein, is immune from taxation, either as against the Government itself or as against one who holds it as a bailee."

VII. The Economic Results Of Immunity Are For Legislative Bodies, Not Courts, To Decide.

The Minnesota Supreme Court seems to have been influenced in reaching its conclusions by the economic consequences of immunity. In its first opinion, it said (R 30), "So, at the outset, it would seem to most people that this property and S. R. A.'s use and possession of it should bear its just proportion of the public tax burden" and again (R 38), "here, as much as in that case, S. R. A. should not be allowed 'a windfall' as obviously it would be were its position to be sustained."

We submit that the wisdom or fairness of the law was no more before the Minnesota court here than it was before the courts in the cases cited which establish the applicable rule. Courts have no concern with economic arguments. They present problems exclusively for the people themselves as represented in the law making bodies. Legislatures may

shift the emphasis in response to the force of public opinion. The judiciary will ascertain and declare the legislative will whatever it may be, St. Louis v. Wiggins Ferry Company, 11 Wall. 423, 20 L. Ed. 192.

That principle has been plainly stated by this Court in 1885 in Northern Pacific Railway v. Rockne, supra, in these words:

> "We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation. *The remedy lies with Congress and is of easy application.* If that body will take steps to enforce its lien for these costs of survey, by sale of the lands, or by forfeiture of title, the Treasury of the United States would soon be reimbursed for its expenses in making the surveys, and the States and Territories, in which the lands lie, be remitted to their appropriate rights of taxation. *The courts can do no more than declare the law as it exists.*"

This Court was still of the same opinion in 1944 when the case of United States v. Allegheny County, supra was decided. Allegheny County did not fail to urge the "unfairness" and "injustice" of Mesta's escape from "just taxation." While the considerations underlying the argument reminded the Supreme Court of its "heavy responsibility," they did "hardly provide a guide or alter the usual principles for decisions." The equities of this unfortunate conflict between the United States and one of its most important industrial communities *are not capable of judicial ascertainment or equalization* . . . we can only say that our constitutional system *as judicially interpreted from the beginning* leaves no room for the localities to impose either *compensatory* or re-

taliatory taxation on government property interests. *Their remedy lies in petition to the Federal Congress, which also is their Congress.*" (Italics supplied.)

Obviously, the contract was entered into by S. R. A. in the light of an extensive and authoritative body of case law holding without division of authority, that where the United States sells property under a contract whereby title is reserved in the government until full payment of the purchase price, neither the property itself nor the interest of the purchaser is subject to state taxation until the purchase price is paid in full and the purchaser is entitled to a deed. The price paid by it and accepted by the government was based upon the assumption that these legal conclusions would be followed if litigation ensued. No "windfall" will have been allowed S. R. A. if the law as pronounced by this Court follows the law as established by earlier decisions. If the state decisions are affirmed, however, a "windfall" will have been allowed to the County and State in that they will collect a tax on property previously thought to be immune from state taxation.

The immunity of the Federal Government from taxation by the states has always been and always will be important. Whenever it has been before the courts its importance to the state and municipal governments has been implicit. Every determination of immunity from taxation between governmental units is ultimately beneficial to one and correspondingly detrimental to others.

At the same time we may well keep in mind the fact that usually, as in the present case, the State and municipal governments have received no tax revenues from the Federal lands prior to a sale to a private citizen and there is there-

for no loss or injury, as is suggested by the opinions of the State Court, arising out of the sale of the tax exempt land. Quite the contrary, however, the land is placed in the process of becoming taxable when full legal title vests in the purchaser. But this question cannot be determined and will not be considered in the light of economic effects upon one governmental body in its relation to another.

Without presuming to advance economic arguments, let us inquire whether it may not be in the public interest for the United States to reserve title and to clothe the lands sold with an immunity from local taxation until the sale is complete. That must be the most salutary method of disposing of large Federal holdings which otherwise might never be restored to the tax rolls if they were to be immediately saddled with the burden of local taxation upon the execution of a contract of sale. There is as much weight to this economic argument as to the other and by this purchase agreement and its terms which are clearly on authority from Congress, the United States has said just that.

The economic aspects of such problems are within the province of legislatures and not in that of the courts.

CONCLUSION.

The Minnesota Supreme Court was in error fundamentally in failing to recognize that these cases are controlled by the decisions of this Court as expressed particularly in Railway Company v. Prescott, Railway Company v. McShane, Northern Pacific Railway Company v. Rockne, Irwin v. Wright, and United States v. Allegheny County, supra. The refinements upon which the State Court based its conclu-

sions that these cases can be distinguished have not been apparent to other courts or to textwriters generally. It has been held almost with unanimity that premises sold by the United States under such a contract as is here before the Court is not subject to state taxation until all of the terms required to be performed by the purchaser to entitle him to a deed, including full payment of the purchase price, have in fact been performed.

In one breath, the state court holds that real estate taxation in Minnesota is *in rem*—against the land, not against persons; in the next breath, it holds that persons represented by their respective interests and not the land as a whole are to be taxed. No Legislative authority for such a procedure is noted and none exists. The land itself is the subject of taxation under our statutes. The levy of a tax upon the premises here sold under contract by the United States must be a lien superior to the rights of the United States.

We respectfully submit that the findings and conclusions of the trial court in the first instance (R 16-21) were in accordance with the law and that the judgments of the Supreme Court of Minnesota in these causes should be reversed.

Respectfully submitted,

ROLAND J. FARICY
Attorney for Petitioner
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota.

OTIS, FARICY & BURGER
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota
of Counsel

APPENDIX.

APPLICABLE PROVISIONS OF MINNESOTA STATUTES

272.01 PROPERTY SUBJECT TO TAXATION. All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except such as is by law exempt from taxation.

272.03 DEFINITIONS. * * * Subdivision 2. Real Property. For the purposes of taxation, "real property" shall be construed to include the land itself and all buildings, structures, and improvements or other fixtures or whatsoever kind thereon, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same.

Subdivision 3. Personal Property. For the purposes of taxation, "personal property" shall be construed to include:

* * * * *

(3) All improvements made by others upon land the fee of which is still vested in the United States, and all improvements, including elevators and other structures, upon lands the title to which is still vested in any railroad company or other corporation whose property is not subject to the same mode and rule of taxation as other property;

* * * * *

272.04 MINERAL, GAS, COAL, AND OIL OWNED APART FROM LAND. When any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil or other similar interests may be assessed and taxed separately from such surface rights and interests in such real estate and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

272.31 LIEN OF REAL ESTATE TAXES. The taxes assessed upon real property shall be a perpetual lien thereon, and on all structures and standing timber thereon and on all minerals therein, from and including May first in the year in which they are levied, until they are paid; but, as between grantor and grantee, such lien shall not attach until the first Monday of January of the year next thereafter.

273.01 LISTING AND ASSESSMENT, TIME. All real property subject to taxation shall be listed and assessed every even-numbered year with reference to its value on May first preceding the assessment, and all real property becoming taxable any intervening year shall be listed and assessed with reference to its value on May first of that year. Personal property shall be listed and assessed annually with reference to its value on May first; and, if acquired on that day, shall be listed by or for the person acquiring it.

273.11 VALUATION OF PROPERTY. All property shall be assessed at its true and full value in money. In determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value

the price for which such property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property, the value of the land, exclusive of structures and improvements, shall be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land. * * *

273.13 CLASSIFICATION OF PROPERTY. Subdivision 1. How classified. All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as provided by this section.

* * * * *

Subdivision 9. Class 4. All property not included in the preceding classes shall constitute class four and shall be valued and assessed at 40 per cent of the full and true value thereof.

* * * * *

273.19 LESSEES AND EQUITABLE OWNERS. Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincor-

porated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same.

275.01 LEVY IN SPECIFIC AMOUNTS. All taxes shall be levied or voted in specific amounts and the rates per cent shall be determined from the amount of property as equalized by the state board of equalization each year, except such general taxes as may be definitely fixed by law.

275.08 AUDITOR TO FIX RATE. The rate per cent of all taxes, except the state tax and taxes the rate of which may be fixed by law, shall be calculated and fixed by the county auditor according to the limitations in this chapter hereinafter prescribed; provided, that if any county, city, town, or school district shall return a greater amount than the prescribed rates will raise, the auditor shall extend only such amount of tax as the limited rate will produce.

279.16. JUDGMENT WHEN NO ANSWER; FORM; ENTRY. Upon the expiration of 20 days from the publication of the notice and list, the affidavit of publication being filed, the clerk shall enter judgment against each and every such parcel as to which no answer has been filed, which judgment shall include all such parcels, and shall be substantially in the following form:

State of Minnesota)
District Court

ss.

County of.....)
.....Judicial District

In the matter of the proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 19...., for the county of....., state of Minnesota.

A list of taxes on real property, delinquent on the first Monday in January, 19...., for said county of....., having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and more than 20 days having elapsed since the last publication of the notice and list, and no answer having been filed by any person, company, or corporation to the taxes upon any of the parcels of land hereinafter described, it is hereby adjudged that each parcel of land hereinafter described is liable for taxes, penalties, and costs to the amount set opposite the same, as follows:

Description. Amount.

The amount of taxes, penalties, and cost to which, as hereinbefore stated, each of such parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation; and it is adjudged that, unless the amount to which each of such parcels is liable be paid, each of such parcels be sold, as provided by law, to satisfy the amount to which it is liable.

Dated this.....day of....., 19.....

.....

Clerk of the District Court,

County of .....

The judgment shall be entered by the clerk in a book to be kept by him, to be called the real estate tax judgment

book, and signed by the clerk. The judgment shall be written out on the left-hand pages of the book, leaving the right-hand pages blank for the entries in this chapter hereinafter provided; and the same presumption in favor of the regularity and validity of the judgment shall be deemed to exist as in respect to judgments in civil actions in such court, except where taxes have been paid before the entry of judgment, or where the land is exempt from taxation, in which cases the judgment shall be prima facie evidence only of its regularity and validity.

280.01 MODE OF SALE. On the second Monday in May, in each year, the county auditor shall sell all parcels of land against which judgment has been entered and remains unsatisfied for the taxes of the preceding year or years. * * *

280.03 CERTIFICATE OF SALE. The county auditor shall execute to the purchaser of each parcel a certificate which may be substantially in the following form:

"I,....., auditor of the county of....., state of Minnesota, do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county....., on the..... day of ....., 19...., in proceedings to enforce the payment of taxes delinquent on real estate for the years ..... for the county of....., which sale was held at....., in said county of .....,on the .....day of..... ....., 19...., the following described parcel of land, situate in said county of....., state of Minnesota: (insert description), was offered for sale to the bidder who should offer to pay the amount for which the same was to be sold, at the lowest annual rate of interest on

such amount; and at said sale I did sell the said parcel of land to ..... for the sum of..... dollars, with interest at ..... per cent per annum on such amount, that being the sum for which the same was to be sold, and such rate of interest being the lowest rate per cent per annum bid on such sum; and, he having paid such sum, I do therefore, in consideration thereof, and pursuant to the statute in such case made and provided, convey the said parcel of land, in fee simple, to said....., his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this..... day of ....., 19.....

.....

County Auditor."

If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein, in fee simple, without any other act or deed whatever. Such certificate may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect. If any purchaser at such sale shall purchase more than one parcel, the auditor shall issue to him a certificate for each parcel, so purchased.

280.06 WRONG NAME OF OWNER. No such sale shall be affected or deemed invalid on account of the use of another name than that of the true owner in describing the ownership of the parcel of land sold in any tax proceeding.

280.11 LANDS BID IN FOR STATE. At any time after any parcel of land has been bid in for the state, the same not having been redeemed, the county auditor shall assign and convey the same, and all the right of the state therein ac-

quired at such sale, to any person who shall pay the amount for which the same was bid in, with interest at the rate of 12 per cent per annum, and the amount of all subsequent delinquent taxes, penalties, costs, and interest at such rate upon the same from the time when such taxes became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I....., auditor of the county of....., state of Minnesota do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county of....., on the..... day of....., 19...., in proceedings to enforce the payment of taxes delinquent upon real estate for the years ..... for the county of....., which sale was held at....., in said county of....., on the..... day of....., 19...., the following described parcel of land, situate in said county of ....., state of Minnesota: (insert description), was duly offered for sale; and, no one bidding upon such offer an amount equal to that for which the parcel was subject to be sold, the same was then bid in for the state at such amount, being the sum of.....dollars; and the same still remaining unredeemed, and on this day..... .....having paid into the treasury of the county the amount for which the same was so bid in, and all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to ..... dollars, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and convey this parcel of land, in fee simple, with all the right, title, and interest of the state acquired therein at such sale, to .....,

his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this..... day of....., 19....

.....

(SEAL) County Auditor."

If the land shall not be redeemed, as provided in chapter 281, such certificate shall pass to the purchaser or assignee an estate therein, in fee simple, without any other act or deed whatever. Such certificate or conveyance may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect.

280.25 PURCHASER TO RECEIVE DEED. Any person, or his heirs or assigns, receiving the certificate described in section 280.13 shall be entitled to a deed from the state 60 days after the service of a notice of expiration of time from redemption and filing proof of such service, which notice shall be substantially as provided in section 281.13 and until the expiration of such time for redemption the land described in such certificate shall be subject to redemption in the manner provided in section 281.02 and upon the expiration of such redemption period, upon presentation of such certificate to the commissioner of taxation, he shall be authorized to execute a deed in the name of the state to the person entitled thereto, conveying the lands therein described; and every such deed shall vest the grantee with complete title to such lands, subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at that tax sale had been paid. Such deed may be recorded as other deeds of real estate and the record thereof shall have the same force and effect in all respects

as the record of such deeds and shall be evidence in like manner.

280.26. HOW AND WHEN PURCHASER TO GET DEED. Any person, or his heirs or assigns, receiving the certificate described in section 280.25 shall be entitled to a deed from the state and, upon presentation of such certificate to the commissioner of taxation, he shall be authorized to execute a deed in the name of the state to the person entitled thereto, conveying the lands therein described, and every such deed shall vest the grantee with complete title to such lands, subject to the defenses that the tract or parcel was exempt from taxation or that the taxes had been paid for which such tract or parcel was sold at the said tax sale. Such deed may be recorded as other deeds of real estate and the record thereof shall have the same force and effect in all respects as the record of such other deeds and shall be evidence in like manner. Any one having any interest in any such tract or parcel of land shall have the right to redeem the land, as provided in chapter 281, and no such tax deed shall be issued, nor shall the full period of redemption expire until 60 days shall have elapsed after the filing of proof of service of notice.

CHAPTER 328 H. F. No. 561

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

Mortgage defined.—Section 1. The words "real property", "real estate" and "land", as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905,

shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage", as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price.